

## **REMARKS**

The Office Action mailed May 28, 2003 has been received and the Examiner's comments carefully reviewed. Claims 1-9, 21, 22, 38 and 39 have been allowed and claim 18 objected-to. Applicants thank the Examiner for this notification. Claims 10, 15-17, 24, 29, 37, 40, and 41 have been amended. Claims 46-52 have been added. No new subject matter has been added. Claims 1-11, 13-19, 21-25, 27-33, 37-52 are currently pending. Applicants respectfully submit that the pending claims are in condition for allowance.

### **Rejections Under 35 U.S.C. §112**

The Examiner rejected claims 15 and 16 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particular point out and distinctly claim the subject matter which the applicant regards as the invention. Applicants have amended claims 15 and 16 to address the antecedent basis for the recited claim elements. Applicants respectfully submit that claims 15 and 16 are now in condition for allowance.

### **Rejections Under 35 U.S.C. §102**

#### I. Andersson (U.S. Patent 4,995,383)

The Examiner rejected claims 17, 19 and 40 under 35 U.S.C. §102(b) as being anticipated by Andersson (U.S. Patent 4,995,383). Applicants respectfully traverse this rejection, however have amended claims 17 and 40 to advance this application to allowance. Applicants reserve the right to pursue the original subject matter via a continuing application.

Andersson discloses a corrective posture device 1 worn when a person has undesirable posture. The posture device 1 includes a first end 1a that secures to a person's lower back region and a second end 1b that secures to a person's upper back region. Column 4, lines 49-53.

Independent claims 17 and 40 recite a support device for supporting tissue overlying a first and second nasal passage of a horse. The device includes a first side piece for applying over a first nasal passage and a second side piece for applying over a second nasal

passage. The device further includes a bridge piece sized to extend between the side pieces when the side pieces are applied over the first and second nasal passages.

The posture device is not sized for use on a horse's nose. Claims 17 and 40 have been amended to clarify that the bridge piece is sized to extend between the side pieces when the side pieces are applied to the horse's nose. The posture device 1 of Andersson has an attachment means 1a that spans the length of a person's back, i.e. from the lower back region to the upper back region. The posture device is not sized to extend between side pieces applied to the nasal passages of a horse. For at least this reason, Applicants respectfully submit that independent claims 17 and 40, and dependent claim 19 are patentable.

## II. Raunig (U.S. Patent 5,817,039)

The Examiner rejected claims 24, 25, 27-33, 37 and 41-45 under 35 U.S.C. §102(e) as being anticipated by Raunig (U.S. Patent 5,817,039). Applicants respectfully traverse this rejection, but have amended claims 24, 29, 37 and 41 to advance this application to allowance. Applicants reserve the right to pursue the original subject matter via a continuing application.

Raunig discloses a nasal splint system including a nasal splint 6 that is adhered to a person's face with adhesive tape 11, 14. The splint 6 has "a central port designed to rest on the bridge of the nose and two lateral parts designed to rest on each side of the cheek adjacent to the nose." Column 1, lines 51-54.

Each of independent claims 24, 29, 37 and 41 have been amended to clarify that the claimed nasal support device includes support structure configured to reduce the draw of the supporting tissues inward toward the nasal passages during respiration. Support for this amendment is found on page 21, lines 16-17 of the specification. Raunig does not disclose that the nose splint is configured to reduce tissues overlying the nasal passages from being drawn inward during breathing; rather, the splint is configured to merely rest upon the nose bridge and the cheeks.

In light of the amendments that clarify that the nasal support device includes support structure that reduces an inward draw of the tissues overlying the nasal passages during

respiration, Applicants respectfully submit that independent claim 24, 29, 37, 41, and dependent claims 25, 28, 30-33, and 42-45 are patentable.

III. Beaudry (WO 97/42918)

The Examiner rejected claims 10, 11, 13-16 and 23 under 35 U.S.C. §102(e) as being anticipated by Beaudry (WP 97/42918). Applicants respectfully traverse this rejection, however, have amended claim 10 to advance this application to allowance. Applicants reserve the right to pursue the original subject matter in a continuing application.

It is noted that the Examiner rejected claims 10, 11, 13-16 and 23 under 35 U.S.C. 102(e). The Beaudry reference does not disclose each and every element recited in claim 10. Applicants assume the Examiner intended to reject claims 10, 11, 13-16 and 23 under 35 U.S.C. 103 as the Examiner states "the specific size range is not disclosed [and that] [i]t would have been obvious to have made the nasal dilator" the size as claimed. Clarification is requested if this assumption is incorrect.

The Examiner asserts that it would have been obvious to manufacture the device of FIG. 7 of Beaudry with dimensions including a length of 10 cm and a width of 6 cm as noses sizes of human vary. Applicants respectfully point out that if the length of the device in FIG. 7 were 10 cm in length (4 inches), the width would proportionately be 3 inches. Properly positioning and centering such a device over a human's nasal passages would require securing a portion of the width over the nasal passage openings or even across the mouth of the person. Clearly, the recited size limitation is not obvious as it would render the device inoperable and non-functional for use on humans as the Examiner suggests.

Likewise, if the device in FIG. 7 of Beaudry were 5 cm in width (2 inches), the length would proportionately be 6.5 inches. Properly positioning this device across a human's nasal passages would require securing the length of the device from essentially one side of a person's face to the other side. Clearly, the recited size limitation is not obvious as it would not be practical for use on humans.

Beaudry provides no suggestion or motivation to modify the device of FIG. 7 to have dimensions as recited by claim 10. The Examiner appears to have used Applicants' disclosure as a starting point and worked backwards to modify the Beaudry device to

improperly reconstruct the claimed invention. Applicants therefore respectfully submit that claim 10, and dependent claims 11, 13-16, and 23 are patentable over the nasal mechanism of Beaudry.

With respect to FIGS. 61-76, these embodiments are dressings used to cover wounds. These embodiments do not relate to a support device having a support layer configured to reduce the draw of the supporting tissues inward toward the nasal passages during respiration. In contrast, the dressings include a stabilizing section that acts like a leaf spring to apply a positive pressure downward through a gauze pad to stop bleeding from a wound. Page 25, lines 5-21 and page 28, lines 21-25. At least because the dressing embodiments do not reduce the inward draw of nasal passages, rather apply an opposite downward force, Applicants respectfully submit that claim 10, and dependent claims 11, 13-16, and 23 are patentable.

#### Rejections Under 35 U.S.C. §103

##### IV. Andersson (U.S. Patent 4,995,383)

The Examiner rejected claims 10, 11 and 23 under 35 U.S.C. §103(a) as being unpatentable over Andersson (U.S. Patent 4,995,383). Applicants respectfully traverse this rejection.

Claim 10 recites a support device having a first axis that bisects a surface layer along a traverse dimension and a second axis that bisects the surface layer along a longitudinal dimension. The major longitudinal dimension is located between reduced longitudinal dimensions. The Andersson posture device simply fails to teach or suggest a configuration having a major longitudinal dimension located between reduced longitudinal dimensions. In contrast, the major longitudinal dimension of the Andersson device is located between increased longitudinal dimensions.

Because Andersson does not teach or suggest the structural limitations of claim 10, Applicants respectfully submit that independent claim 10, and dependent claims 11 and 23 are patentable.

V. New claims 46-52

New claims 46-52 have been added. Each of claims 46-51 is a dependent claim. For at least the reasons as discussed above regarding the respective independent claim, Applicants submit that dependent claims 46-51 are patentable. Independent claim 52 incorporates objected-to subject matter as discussed below.

**Allowable Subject Matter**

Claims 1-9, 21, 22, 38 and 39 are allowed. Claim 18 was objected-to but the Examiner indicated that claim 18 would be allowable if rewritten in independent form incorporating all the limitations of the base claim and any intervening claims. Applicants thank the Examiner for this notification. New claim 52 incorporates the subject matter of base claim 17 and object-to claim 18. Applicants respectfully submit that new claim 52 is in condition for allowance.

**SUMMARY**

It is respectfully submitted that each of the presently pending claims (claims 1-11, 13-19, 21-25, 27-33, 37-52) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.

Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.

Respectfully submitted,



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